

CONSTITUTIONAL ASSEMBLY

SUBCOMMITTEE 2

**THURSDAY
3 OCTOBER 1996
14:00**

G26

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

SUBCOMMITTEE 2

NOTICE OF MEETING

Please note that a meeting of Subcommittee 2 will take place as indicated below:

Date : Thursday, 3 October 1996

Time : 14:00

Venue : G26

Agenda

- 1 **Opening and welcome**
- 2 **Minutes** (pages 1-3)
- 3 **Constitutional amendments** (pages 4-5)
- 4 **Provincial powers**
 - 4.1 Overrides : 146(2)(b)
 - 4.2 Presumptions : 146(4)
 - 4.3 Other
- 5 **Local government**
 - 5.1 Framework/categories
 - 5.2 Municipal structures
 - a) Council
 - b) Executive Committee
 - c) Subcommittees/standing committees
 - d) Administration

5.3 Procedures for by-laws

5.4 Decisions in Council

5.5 Finances (page 6-7)

a) Fiscal powers and functions

b) Excise tax

6 **Any other business**

7 **Closure**

Hassen Ebrahim
Executive Director

CONSTITUTIONAL ASSEMBLY
MINUTES OF THE FIFTH MEETING OF SUBCOMMITTEE 2
WEDNESDAY, 2 OCTOBER 1996

PRESENT

Gordhan, PJ (Chairperson)

Ackermann C	Alant TG
Bhabha M	De Lange J
Du Toit DC	Groenewald PH
Groenewald PJ	Hogan B
King T	Malebo SM
Marais P	Maree J
Ngcuka B	Rabie JA
Selke J	Smith P
van Breda A	Watson W

Apologies: Meshoe K

Advisors: Erasmus G, Grove G, Murray C, Yacoob Z

In attendance: Ebrahim H, McKenzie K

1 OPENING

The meeting commenced at 10:20.

2 MINUTES

The minutes were noted.

3 CONSTITUTIONAL AMENDMENTS

The third draft by the technical advisers, with an addition to section 167(4), was agreed to. The FF reserved their position.

4 PROVINCIAL POWERS

This was still being discussed in bilateral meetings.

5 LOCAL GOVERNMENT

Discussion was held on a new draft chapter contained in the documentation for the meeting.

5.1 Framework

- i. The framework as set out in 155 was agreed to, but it was noted that some of the formulations needed refining.
- ii. It was noted 155(4)(b) required further attention.

5.2 Municipal structures: Council

- i. It was noted that sections of 158(1)(d) may be superfluous.
- ii. It was agreed that 160(1)(a) and 160(8)(b) should be combined.

5.3 Decisions in Council

It was noted that there was no agreement regarding 160(3)(b) providing for the majorities required in order for a question to be decided.

The NP proposed that an absolute majority (50 + 1 % of the Council) be required when voting on the annual budget, any by-laws, setting tariffs and obtaining loans.

5.4 Finances : Fiscal powers and functions

- i. The ANC stated that they did not want to prevent the possibility of secondary/overarching municipalities, as defined in 155(1)(c), from raising tax on property.

This should be provided for in national legislation. This approach would allow for flexibility with regard to the evolving nature of local government, would cater for different situations throughout the country and take account of present situations in which this was the case.

- ii. The NP stated that this approach may not pass muster with the Constitutional Court particularly with regard to section 79 of the judgment.

They noted that secondary/overarching municipalities only levied property tax when acting as an agent for non-existent local government.

They stated that the right of primary municipalities to tax property was reflected in the new text and had already been

agreed to. This did not mean that the primary municipality was the sole custodian of money which it collected.

The NP suggested that a new section 229(4)(c)(v) be added as follows: "... the extent to which revenue is raised by municipalities is commensurate with their fiscal capacity and their tax base." It was noted that this may not be necessary in order to address the judgment of the Court.

- iii. The FF stated that it was a fundamental right of municipalities to impose rates and taxes. They did not support the ANC's proposal.
- iv. The IFP's proposals were contained in their document of 2 October 1996 entitled "Preliminary amendments to the Constitutional text".
- v. It was agreed that section 229 would be discussed further in bilateral meetings.
- vi. It was noted that the Department of Finance prepared the annual budget 18 months in advance. As a result there would be a disjuncture between the budget and the new Constitution. This should be provided for in the transitional arrangements.

5.5 Other

It was noted that the Department of Constitutional Development would be tabling proposals regarding sections of the local government chapter which may be legally ambiguous.

The IFP stated that they would pursue their proposals in bilateral meetings. They wished to make chapter 7 subject to the provisions of chapter 12 and for traditional authorities to operate as primary municipalities. They noted that strictly speaking this was not relevant to the judgment of the Court.

The DP stated that they had minor concerns with the chapter and would discuss these in bilateral meetings.

6 CLOSURE

It was agreed that discussion would continue on 3 October 1996 at 10:00.

**Status: third draft by technical advisors
1 October 1996**

CONSTITUTIONAL AMENDMENTS

74. (1) Section 1 and this subsection may be amended by a Bill passed by
- (a) the National Assembly with a supporting vote of at least 75 per cent of its members; and
 - (b) the National Council of Provinces with a supporting vote of at least six provinces.
- (2) Chapter 2 may be amended by a Bill passed by -
- (a) the National Assembly with a supporting vote of at least two thirds of its members; and
 - (b) the National Council of Provinces with a supporting vote of at least six provinces.
- (3) Any other provision of the Constitution may be amended by a Bill passed by -
- (a) the National Assembly with a supporting vote of at least two thirds of its members; and
 - (b) the National Council of Provinces with a supporting vote of at least six provinces if the amendment -
 - (i) relates to a matter that affects the Council;
 - (ii) alters provincial boundaries, powers, functions or institutions; or
 - (iii) amends a provision that deals specifically with a provincial matter.
- (4) A Bill amending the Constitution may not include provisions other than constitutional amendments and matters connected with these amendments.
- (5) At least 30 days before a Bill amending the Constitution is introduced in terms of section 73 (2), the person or committee intending to introduce the Bill must -
- (a) publish in the national Government Gazette, and in accordance with the rules and orders of the National Assembly, particulars of the substance of the proposed amendment for public comment;
 - (b) submit, in accordance with the rules and orders of the Assembly, those particulars to the provincial legislatures for their views; and
 - (c) submit, in accordance with the rules and orders of the National Council of Provinces, those particulars to the Council for a

public debate, if the proposed amendment is not an amendment that is required to be passed by the Council.

- (6) A Bill amending the Constitution may not be put to the vote in the National Assembly within 30 days of -
 - (a) its introduction if the Assembly is sitting; or
 - (b) its tabling in the Assembly if the Assembly is in recess.
- (7) If a Bill referred to in subsection (3)(b), or any part of the Bill, concerns only a specific province or provinces, the National Council of Provinces may not pass the Bill or the relevant part of it unless it has been approved by the legislature or legislatures of the province or provinces concerned.
- (8) A Bill amending the Constitution that has been passed by the National Assembly and, where applicable, by the National Council of Provinces, must be referred to the President for assent.

Proposed amendment to section 167 (4) by inserting the following paragraph.

"(..) decide on the constitutionality of any constitutional amendment;"

Municipal fiscal powers and functions

- 229 (1) Subject to subsections (2), (3) and (4), a municipality may impose -
- (a) rates on property or surcharges on fees for services provided by or on behalf of the municipality; or
 - (b) if authorised by national legislation, other taxes, levies or duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty.
- (2) The power of a municipality to impose rates on property, surcharges on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties -
- (a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour; and
 - (b) may be regulated by national legislation.
- (3) When two municipalities have the same fiscal powers in terms of this section with regard to the same area, national legislation must provide for -
- (a) an appropriate division of those powers between the two municipalities; and
 - (b) an appropriate division between those municipalities of money that they may raise in terms of subsection (1).
- (4) The appropriateness of any tax, levy or duty authorised in terms of subsection (1)(b), or of any division of fiscal powers or money in terms of subsection (3)(a) or (b), must be determined in terms of national legislation in accordance with the following criteria:
- (a) The need to comply with sound principles of taxation including the principle that the same tax, levy or duty should not be imposed by different municipalities in the same area;
 - (b) the need for cooperation between municipalities; and
 - (c) in relation to the division of money, the extent to which the money raised by the municipalities concerned is commensurate with their fiscal capacity and tax base.

- (5) National legislation envisaged in this section may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

Addition to Schedule 6 item 21

- (5) Until the legislation envisaged in section 229 (1)(b) is enacted, a municipality remains competent to impose any tax, levy or duty which it could legally impose when the Constitution took effect.

October 3, 1996

